

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE: SANDRA J. WAYNE

Case Number: 10-76552

Chapter 13

Judge **RHODES**

Debtor.

SANDRA J. WAYNE,

Plaintiff,

v.

Adversary Case No.

**WELLS FARGO HOME MORTGAGE, INC. d/b/a
AMERICA'S SERVICING COMPANY AND
OAK STREET MORTGAGE LLC AND ALL ASSIGNS,**
Jointly and severally,

Defendants.

**COMPLAINT TO DETERMINE THE EXTENT OF THE LIEN OF WELLS FARGO HOME
MORTGAGE, INC. d/b/a AMERICA'S SERVICING COMPANY AND OAK STREET MORTGAGE LLC
AND ALL ASSIGNS**

Now comes Plaintiff herein, Sandra J. Wayne, by and through Counsel, Acclaim Legal Services, PLLC, and moves this Honorable Court as follows:

1. Jurisdiction of this matter is conferred on the court by 28 U.S.C. 1334(b).
2. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(K).
3. Venue is proper pursuant to 28 U.S.C. 1409(b).
4. Plaintiff filed a Chapter 13 Petition on December 6, 2010.
5. A Chapter 13 Plan was filed which proposed to strip the lien of WELLS FARGO HOME MORTGAGE, INC. d/b/a AMERICA'S SERVICING COMPANY AND OAK STREET MORTGAGE LLC AND ALL ASSIGNS. (hereinafter "Defendants") from the collateral commonly known as 23550 Kenosha Street, Oak Park, MI 48237, treating its claim as wholly unsecured.
6. EMC Mortgage has a first priority mortgage on the property.
7. Defendants have a second priority lien on the above described real property, represented by a mortgage in the face amount of Thirty Six Thousand Dollars (\$36,000.00), dated September 21, 2004 and recorded January 21, 2005 in Liber 34812, Page 434 at the Oakland County Register of Deeds.
8. That 11 U.S.C. 506(a) allows a creditor to have a secured claim to the extent of the value of its interest in the estate's interest in the property, and an unsecured claim to the extent that its interest is less than the amount of its allowed secured claim.
9. The value of the Plaintiff's interest in the collateral is approximately \$83,000.00. (See Plaintiff's schedule A, incorporated herein by reference).

10. The interest of the first mortgagee is approximately \$135,472.00. (See Plaintiff's schedule D, incorporated herein by reference).
11. There is no remaining interest in the estate's interest in the property to which the second priority lien of Defendants can attach.

WHEREFORE, the Plaintiff prays that this Court enter an Order as follows:

- A. That a mortgage in the face amount of Thirty Six Thousand Dollars (\$36,000.00), dated September 21, 2004 and recorded January 21, 2005 in Liber 34812, Page 434 at the Oakland County Register of Deeds, shall be stripped and discharged from the following described premises:

Land situated in the City of Oak Park, County of Oakland, and State of Michigan, to wit:

Lot 34, Parklane Subdivision, according to the Plat thereof as recorded in Liber 63, Page 21 of Plats, Oakland County Records.

Tax ID: 25-30-403-008

Commonly known as: 23550 Kenosha Street, Oak Park, MI 48237

- B. That upon discharge of the Plaintiff's bankruptcy case, the Defendants or subsequent assignees shall comply with L.B.R. 2015-5(a)(3)(A)(E.D.M.) and provide to the Plaintiff a release, termination statement, discharge of mortgage, or other appropriate certificate suitable for recording.
- C. That upon discharge of the Plaintiff's bankruptcy case, the Order to Determine the Extent of a Lien Concerning Real Property may be recorded with the Register of Deeds to discharge the mortgage and release the lien held by Defendant in the face amount of Thirty Six Thousand Dollars (\$36,000.00), dated September 21, 2004 and recorded January 21, 2005 in Liber 34812, Page 434 at the Oakland County Register of Deeds.
- D. That if the Plaintiff fails to complete the Chapter 13 plan and obtain a Chapter 13 discharge order in the bankruptcy case this Order does not affect the validity or enforceability of the Mortgage and may not be used in any subsequent bankruptcy case of the Plaintiff either to compel the holder of the Mortgage to execute a discharge of the Mortgage, or to otherwise act as a discharge of the Mortgage.

Dated: January 6, 2011

/s/ William D. Johnson
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